



**State of New Hampshire**  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



April 12, 2001

Seth A. O'Donnell  
41 Mooers Road  
Nottingham, NH 03290

**NOTICE OF DECISION**  
**ADMINISTRATIVE FINE**  
**No. AF 2000-024**  
**(SUBSURFACE SYSTEMS BUREAU)**

Dear Mr. O'Donnell

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 2000-024 issued May 8, 2000, the Water Division sought an administrative fine totaling \$1,650 against you for an alleged violation of RSA 485-A:32 relating to constructing a septic system without prior approval of plans and specifications by DES, on property located at 20 Grandview Drive in Bow, NH ("the Property"). Pursuant to RSA 485-A:43, V, and based on my review of the evidence presented at the hearing held on this matter on March 19, 2001, I have concluded that a fine of \$1,650 is appropriate as set forth below:

A fine in the amount of \$1,500 is imposed against you for constructing a septic system on the Property without prior approval of plans and specifications by DES.

- Based on Env-C 601.09(d)(1), which requires an increase in fines based on certain aggravating factors, this fine is increased by 10 percent, to \$1,650.

The \$1,650 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer - State of NH" and sent to the attention of Jim Ballentine, DES/Office of the Commissioner, P.O. Box 95, Concord, NH 03302-0095.

The purpose of RSA 485-A, the state water pollution and waste disposal statute, is to ensure that New Hampshire's surface and ground water supplies are protected from pollution and potential health hazards. To this end, DES is required to approve septic system plans and specifications prior to construction. You violated the statute by constructing a septic system on the Property without first obtaining approval of the plans and specifications by DES.

**This decision is based on the following findings and conclusions:**

- 1 Harmony Campbell is the owner of property located at 20 Grandview Drive, Bow, NH and identified on the Bow tax maps as Lot #140B, Map 15 ("the Property").

RSA 485-A:32 states in part that, "No person shall construct...a sewage or waste disposal system without prior approval of plans and specifications of the sewage or waste disposal system by [DES]."

- 3 By letter dated March 27, 2000, Ms. Campbell notified DES regarding a septic system Seth O'Donnell installed on the Property. In this letter, Ms. Campbell stated that she hired Mr. O'Donnell to install a new septic system to replace an old system on the Property.
- 4 On or about February 22, 2000, Mr. O'Donnell began constructing the septic system.
- 5 Mr. O'Donnell finished constructing the septic system on or about March 10, 2000. The septic tank and leach field, however, remained uncovered.
- 6 On March 20, 2000, Ms. Campbell telephoned DES to determine when the septic system would be inspected and at that time learned that DES had no record of the newly constructed septic system.
- 7 On March 30, 2000, DES inspected the Property and observed a newly constructed septic system. DES records showed that no plans had been submitted for this system.
- 8 On March 31, 2000, Mr. O'Donnell filed an application for the septic system on the Property.
- 9 By letter dated April 4, 2000, DES rejected the septic system plan but informed Mr O'Donnell that it would reconsider the application if certain items were addressed.
- 10 On April 11, 2000, DES approved an amended application that Mr. O'Donnell filed for the septic system, and issued construction approval CA 2000024591.
- 1 On April 14, 2000, DES inspected the septic system and noted some repair work that needed to be done. The repair work was completed during the inspection and DES approved the system for operation at that time.
- 12 Mr. O'Donnell is a licensed septic system designer.
- 3 Mr. O'Donnell is a licensed septic system installer.
- 14 Mr. O'Donnell violated RSA 485-A:32 by constructing a septic system without prior approval of plans and specifications by DES.
- 5 For a violation of RSA 485-A:32, Env-C 604.02(b) authorizes a fine of \$1,500
- 16 None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violation noted in #14 above.
- 17 Under Env-C 601.09(d), the imposed fine must be increased by 10 percent if the Division proves certain aggravating factors by a preponderance of the evidence.
- 18 The Division showed that Mr. O'Donnell, as a licensed septic system designer and installer, was aware of the statutory requirement to obtain prior approval of septic system design plans and specifications before constructing the system. Under Env-C

601.04(d)(1), the fine for the violation in #14 is increased by 10 percent

19. As to the Proposed Findings of Fact and Rulings of Law submitted by the Division, the following rulings are made:

a. Proposed Findings #1- 10 are granted.

b. Proposed Rulings #1-6 are granted.

As you know, a hearing on this matter was scheduled for March 19, 2001. The hearing was held as scheduled, however, you were not present, nor was anyone else present on your behalf. Moreover, because you did not inform the presiding officer of the absence prior to the hearing, the hearing was held pursuant to Env-C 204.09, subject to a motion to reconvene. Subsequently, you failed to file a motion to reconvene the hearing.

Even though you did not attend the hearing, I believe it is proper for this decision to issue. I want to remind you, however, that you and any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,

A handwritten signature in black ink is written over the word "COPY" in a large, bold, sans-serif font. The signature appears to be "Robert W. Varney".

Robert W. Varney  
Commissioner

cc Harry T. Stewart, P.E., Director, DES Water Division  
Richard de Séve, DES Subsurface Systems Bureau  
Gretchen Rule, DES Enforcement Coordinator  
Susan Weiss Alexant, DES Hearings and Rules Attorney